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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,

10 Plaintiff,

11 v.

12 Cesar Humberto Angulo Felix,

13 Defendant.
14

No. CR-16-00002-PHX-DGC

ORDER

15 Defendant Cesar Angulo Felix is an inmate with the Federal Bureau of Prisons
16 (“BOP”). He has filed a one-page motion for compassionate release due to ongoing health
17 concerns from the COVID-19 pandemic. Doc. 49. The government has filed a response.
18 Doc. 51. No reply has been filed. For reasons stated below, the Court will deny the motion.

19 **I. Background.**

20 On May 17, 2016, Defendant received a 63-month prison sentence after pleading
21 guilty to reentry of a removed alien in violation of 8 U.S.C. § 1326. Doc. 33. Defendant
22 presently is confined at the United States Penitentiary in Victorville, California
23 (“USP-Victorville”). *See* Federal BOP, [https://www.bop.gov/mobile/find_inmate/byname](https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results)
24 [.jsp#inmate_results](https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results) (last visited June 8, 2020). His projected release date is July 22, 2020.
25 *See id.*

26 Defendant asserts that he is at high risk from the coronavirus because he has diabetes
27 requiring twice-daily insulin injections. Doc. 49 at 1. He further states that he has elderly
28 family members with the same condition whom he would like to be with during these

1 dangerous and stressful times. *Id.* The government argues that the motion must be denied
 2 because Defendant has not exhausted administrative remedies. Doc. 51 at 1, 4-10. The
 3 Court agrees.

4 **II. Compassionate Release Under 18 U.S.C. § 3582(c) and the First Step Act.**

5 Compassionate release is governed by 18 U.S.C. § 3582(c), as amended by the First
 6 Step Act of 2018. Pub. L. No. 115-391, 132 Stat. 5194, at 5239-40 (2018); *see United*
 7 *States v. Parker*, No. 2:98-CR-00749-CAS-1, 2020 WL 2572525, at *4 (C.D. Cal. May 21,
 8 2020) (citing *United States v. Willis*, 382 F. Supp. 3d 1185, 1187 (D.N.M. 2019)). Section
 9 3582(c) previously provided for compassionate release only upon motion of the BOP
 10 Director. *See id.*; *United States v. McCollough*, No. CR-15-00336-001-PHX-DLR, 2020
 11 WL 2812841, at *1 (D. Ariz. May 29, 2020). The First Step Act amended § 3582(c) to
 12 permit motions for compassionate release by defendants. *See id.*; *United States v. Baye*,
 13 No. 3:12-CR-00115-RCJ, 2020 WL 2857500, at *8 (D. Nev. June 2, 2020) (“The First
 14 Step Act materially altered § 3582(c)(1)(A) as previously only the [BOP] Director could
 15 bring a motion for compassionate release.”) (comparing § 3582(c)(1)(A) (2018) with
 16 § 3582(c)(1)(A) (2002)).

17 A defendant may bring a motion for compassionate release only after (1) requesting
 18 the BOP to make such a motion on his behalf, and (2) exhausting all administrative appeals
 19 after the BOP has denied the request, or 30 days have elapsed after the warden received the
 20 request, whichever is earlier. § 3582(c)(1)(A); *see United States v. Millage*, No. 3:13-CR-
 21 234-SI, 2020 WL 2857165, at *1 (D. Or. June 2, 2020). “The requirement to exhaust
 22 administrative remedies or wait 30 days after the warden receives a request is
 23 jurisdictional.” *United States v. Carlucci*, No. CR 10-00464-01-KHV, 2020 WL 2527013,
 24 at *2 (D. Ariz. May 18, 2020) (citing *United States v. Read-Forbes*, No. 12-20099-01-
 25 KHV, 2020 WL 1888856, at *3-5 (D. Kan. Apr. 16, 2020)); *see also United States v.*
 26 *Weidenhamer*, No. CR-16-01072-001-PHX-ROS, 2020 WL 1929200, at *2 (D. Ariz.
 27 Apr. 21, 2020) (“The critical inquiry is whether the text of § 3582 allows for the Court to
 28 excuse Defendant’s failure to exhaust her administrative remedies. There is no indication

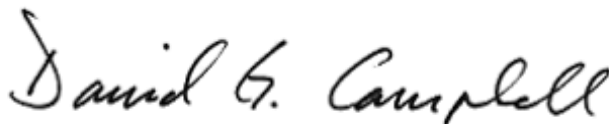
1 in the statutory text, nor has Defendant pointed to other supporting evidence, that would
 2 establish Congress meant to confer on the courts the authority to waive exhaustion.”);
 3 *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (defendant’s motion seeking
 4 compassionate release in light of the COVID-19 pandemic was “futile” because he “failed
 5 to comply with § 3582(c)(1)(A)’s exhaustion requirement,” which “presents a glaring
 6 roadblock foreclosing compassionate release at this point”).

7 **III. Defendant’s Motion.**

8 Defendant does not claim to have filed a request for compassionate release with the
 9 warden of USP-Victorville. Thus, while the Court does not take lightly Defendant’s
 10 concerns about exposure to COVID-19 during his confinement with the BOP,¹ the Court
 11 lacks jurisdiction to consider his motion. See *United States v. Carlucci*, No. CR 10-00464-
 12 01-KHV, 2020 WL 2527013, at *2 (D. Ariz. May 18, 2020); *Weidenhamer*, 2020 WL
 13 1929200, at *2.

14 **IT IS ORDERED** that Defendant’s motion for compassionate release (Doc. 49) is
 15 **denied** for lack of jurisdiction.²

16 Dated this 8th day of June, 2020.

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 20 David G. Campbell
 21 Senior United States District Judge
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 26 ¹ As of June 8, 2020, no inmate or staff at USP-Victorville has been diagnosed with
 27 COVID-19. Federal BOP, COVID-19, Coronavirus, <https://www.bop.gov/coronavirus/index.jsp>.

28 ² Given this ruling, the Court need not address whether Defendant has shown the
 requisite extraordinary and compelling reasons for compassionate release under
 § 3582(c)(1)(A)(i).